

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ENRIQUE DIAZ	§	
v.	§	CIVIL ACTION NO. 2:04cv272
JAMES DIXON, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
DENYING PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

The Plaintiff Enrique Diaz, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Harrison County Jail. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On July 31 and August 6, 2006, Diaz filed motions for summary judgment which were essentially identical. The Defendants filed a response to the motions. On December 8, 2006, the Magistrate Judge issued a Report recommending that the motions for summary judgment be denied, concluding that disputed issues of material fact exist precluding the granting of summary judgment. Diaz filed objections to the Magistrate Judge's Report on December 18, 2006.

In his objections, Diaz says that there are no genuine issues of material fact regarding the issues of denial of access to religious services or discipline without due process. These assertions are not correct. Diaz contends that he was deprived of access to religious services out of retaliation for filing grievances, and that he was placed in a punishment cell on multiple occasions without due process. The documents furnished by the Defendants show that Diaz was excluded from religious services because he had instigated a disruption, and that his cell moves were non-punitive. It is clear

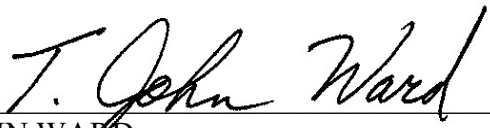
that disputed issues of fact exist, precluding the granting of summary judgment on these issues. Diaz's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings and documents in this case, including the Plaintiff's motions for summary judgment, the Defendants' response thereto, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motions for summary judgment, filed July 31 and August 16, 2006 (docket no.'s 105 and 110) are hereby DENIED.

SIGNED this 6th day of February, 2007.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE